

Developmental Disabilities Council Reading Cover Page

Date: July 24, 2006

Meeting: Public Policy Committee

Reading Number: 06-P8

Issue: DD Ombudsman

Included in this Reading:

DD Ombudsman bill from 2006 session that 2007 bill will be based on.

Background/Summary:

The Council supported the 2006 bill and has put support for a DD Ombudsman on its legislative agendas. Ed talked to the Committee in July about ombudsman models and the possibility of another bill.

Action:

Discuss and VOTE on support of the proposed concept and legislation.

If there are any questions, please contact Donna Patrick at 1-800-634-4473 or donnap@cted.wa.gov

HOUSE BILL 3155

State of Washington

59th Legislature

2006 Regular Session

By Representatives Roberts, Haler, Kagi, Walsh, Hudgins, Chase, Darneille, Linville, Dickerson, Schual-Berke, Conway, Hasegawa, Simpson and Santos

Read first time 01/23/2006. Referred to Committee on Children & Family Services.

1 AN ACT Relating to the office of the ombudsman for persons with
2 developmental disabilities; and adding a new chapter to Title 43 RCW.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 NEW SECTION. **Sec. 1.** An office of the ombudsman for persons with
5 developmental disabilities is created within the office of the governor
6 for the purpose of promoting public awareness and understanding of
7 developmental disabilities, identifying system issues and responses for
8 the governor and the legislature to act upon, and monitoring and
9 ensuring compliance with administrative acts, relevant statutes, rules,
10 and policies pertaining to services for persons with developmental
11 disabilities. The ombudsman shall report directly to the governor and
12 shall exercise his or her powers and duties independently of the
13 secretary of the department of social and health services.

14 NEW SECTION. **Sec. 2.** (1) Subject to confirmation by the senate,
15 the governor shall appoint an ombudsman who shall be a person of
16 recognized judgment, independence, objectivity, and integrity, and
17 shall be qualified by training or experience, or both, in developmental
18 disability services law and policy. Prior to the appointment, the

1 governor shall consult with, and may receive recommendations from the
2 appropriate committees of the legislature, regarding the selection of
3 the ombudsman.

4 (2) The person appointed ombudsman shall hold office for a term of
5 three years and shall continue to hold office until reappointed or
6 until his or her successor is appointed. The governor may remove the
7 ombudsman only for neglect of duty, misconduct, or inability to perform
8 duties. Any vacancy shall be filled by similar appointment for the
9 remainder of the unexpired term.

10 NEW SECTION. **Sec. 3.** The ombudsman shall perform the following
11 duties:

12 (1) Provide information as appropriate on the rights and
13 responsibilities of individuals with developmental disabilities
14 receiving services, and on the procedures for providing these services;

15 (2) Investigate, upon his or her own initiative, or upon receipt of
16 a complaint, an administrative act alleged to be contrary to law, rule,
17 or policy, imposed without an adequate statement of reason, or based on
18 irrelevant, immaterial, or erroneous grounds; however, the ombudsman
19 may decline to investigate any complaint as provided by rules adopted
20 under this chapter;

21 (3) Monitor the procedures as established, implemented, and
22 practiced by the department of social and health services to carry out
23 its responsibilities in delivering services to persons with
24 developmental disabilities;

25 (4) Review periodically the facilities and procedures of state
26 institutions serving persons with developmental disabilities, and state
27 licensed facilities or residences;

28 (5) Recommend changes in the procedures for addressing the needs of
29 persons with developmental disabilities;

30 (6) Submit annually to the appropriate committees of the
31 legislature and to the governor by November 1st a report analyzing the
32 work of the office including recommendations;

33 (7) Grant the appropriate committees of the legislature access to
34 all relevant records in the possession of the ombudsman unless
35 prohibited by law; and

36 (8) Adopt rules necessary to implement this chapter.

1 NEW SECTION. **Sec. 4.** The ombudsman shall treat all matters under
2 investigation, including the identities of service recipients,
3 complainants, and individuals from whom information is acquired, as
4 confidential, except as far as disclosures may be necessary to enable
5 the ombudsman to perform the duties of the office and to support any
6 recommendations resulting from an investigation. Upon receipt of
7 information that by law is confidential or privileged, the ombudsman
8 shall maintain the confidentiality of the information and shall not
9 further disclose or disseminate the information, except as provided by
10 applicable state or federal law. Investigative records of the office
11 of the ombudsman are confidential and are exempt from public disclosure
12 under chapter 42.56 RCW.

13 NEW SECTION. **Sec. 5.** Neither the ombudsman nor the ombudsman's
14 staff may be compelled, in any judicial or administrative proceeding,
15 to testify or to produce evidence regarding the exercise of the
16 official duties of the ombudsman or of the ombudsman's staff. All
17 related memoranda, work product, notes, and case files of the
18 ombudsman's office are confidential, are not subject to discovery,
19 judicial or administrative subpoena, or other method of legal
20 compulsion, and are not admissible in evidence in a judicial or
21 administrative proceeding.

22 NEW SECTION. **Sec. 6.** (1) Identifying information about
23 complainants or witnesses shall not be subject to any method of legal
24 compulsion, nor shall such information be revealed to the governor
25 except under the following circumstances:

26 (a) The complainant or witness waives confidentiality;

27 (b) Under a legislative subpoena when there is a legislative
28 investigation for neglect of duty or misconduct by the ombudsman or
29 ombudsman's office when the identifying information is necessary to the
30 investigation of the ombudsman's acts; or

31 (c) Under an investigation or inquiry by the governor as to neglect
32 of duty or misconduct by the ombudsman or ombudsman's office when the
33 identifying information is necessary to the investigation of the
34 ombudsman's acts.

35 (2) For the purposes of this section, "identifying information"

1 includes the complainant's or witness's name, location, telephone
2 number, likeness, social security number or other identification
3 number, or identification of immediate family members.

4 NEW SECTION. **Sec. 7.** The privilege described in section 5 of this
5 act does not apply when:

6 (1) The ombudsman or ombudsman's staff member has direct knowledge
7 of an alleged crime, and the testimony, evidence, or discovery sought
8 is relevant to that allegation;

9 (2) The ombudsman or a member of the ombudsman's staff has received
10 a threat of, or becomes aware of a risk of, imminent serious harm to
11 any person, and the testimony, evidence, or discovery sought is
12 relevant to that threat or risk; or

13 (3) The ombudsman has been asked to provide general information
14 regarding the general operation of, or the general processes employed
15 at, the ombudsman's office.

16 NEW SECTION. **Sec. 8.** (1) An employee of the office of the
17 ombudsman for persons with developmental disabilities is not liable for
18 good faith performance of responsibilities under this chapter.

19 (2) No discriminatory, disciplinary, or retaliatory action may be
20 taken against an employee of the department of social and health
21 services, an employee of a contracting agency of the department of
22 social and health services, or a family member or recipient of
23 developmental disability services for any communication made, or
24 information given or disclosed, to aid the office of the ombudsman for
25 persons with developmental disabilities in carrying out its
26 responsibilities, unless the communication or information is made,
27 given, or disclosed maliciously or without good faith. This subsection
28 is not intended to infringe on the rights of the employer to supervise,
29 discipline, or terminate an employee for other reasons.

30 (3) All communications by an ombudsman, if reasonably related to
31 the requirements of that individual's responsibilities under this
32 chapter and done in good faith, are privileged under RCW 9.58.070 and
33 that privilege shall serve as a defense in any action in libel or
34 slander.

1 NEW SECTION. **Sec. 9.** When the ombudsman or ombudsman's staff
2 member has reasonable cause to believe that any public official,
3 employee, or other person has acted in a manner warranting criminal or
4 disciplinary proceedings, the ombudsman or ombudsman's staff member
5 shall report the matter, or cause a report to be made, to the
6 appropriate authorities.

7 NEW SECTION. **Sec. 10.** The department of social and health
8 services shall:

9 (1) Allow the ombudsman or the ombudsman's designee to communicate
10 privately with any person with developmental disabilities who is
11 receiving services through the department for the purposes of carrying
12 out its duties under this chapter;

13 (2) Permit the ombudsman or the ombudsman's designee physical
14 access to state institutions serving persons with developmental
15 disabilities, and state-licensed facilities or residences for the
16 purpose of carrying out its duties under this chapter; and

17 (3) Upon the ombudsman's request, grant the ombudsman or the
18 ombudsman's designee the right to access, inspect, and copy all
19 relevant information, records, or documents in the possession or
20 control of the department that the ombudsman considers necessary in an
21 investigation.

22 NEW SECTION. **Sec. 11.** Sections 1 through 10 of this act
23 constitute a new chapter in Title 43 RCW.

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**Children & Family Services
Committee**

HB 3155

Brief Description: Creating an office of the ombudsman for persons with developmental disabilities.

Sponsors: Representatives Roberts, Haler, Kagi, Walsh, Hudgins, Chase, Darneille, Linville, Dickerson, Schual-Berke, Conway, Hasegawa, Simpson and Santos.

Brief Summary of Bill

- Creates the Office of the Ombudsman for Persons with Developmental Disabilities.

Hearing Date: 2/1/06

Staff: Sonja Hallum (786-7092).

Background:

The Division of Developmental Disabilities (DDD) within the Department of Social and Health Services (DSHS) assists individuals with developmental disabilities and their families to obtain services and supports.

If a developmentally disabled person, his or her guardian, or other interested party has a complaint regarding potential abuse or neglect, the person may contact the DDD which will investigate and possibly refer a complaint to adult protective services or child protective services for further investigation. Complaints and reports can also be made to the licensor of an out-of-home placement, generally the Department of Health, or to the Washington Protection and Advocacy System. If there is a complaint regarding certain actions by the DDD, there is an appeal process through the Administrative Procedures Act.

An additional option for complaint resolution is through the available ombuds programs. An ombuds program generally focuses on individual complaint resolution on behalf of individuals and seeks a satisfactory resolution of complaints or grievances by working with provider agencies and state administering agencies.

In Washington, the Long Term Care Ombudsman serves persons with developmental disabilities who live in adult family homes, boarding homes, or nursing homes. The Children & Family Ombudsman serves persons with developmental disabilities who live in foster care. Currently,

Washington does not have an ombuds program for individuals with developmental disabilities who receive state-funded community services.

Summary of Bill:

Creation of the Office

An Office of the Ombudsman for Persons with Developmental Disabilities is created within the Office of the Governor. The Ombudsman is appointed by the Governor, subject to confirmation by the Senate, and holds the office for a term of three years. The Ombudsman reports directly to the Governor and is independent from the Department of Social and Health Services (DSHS).

Ombudsman Duties

The Ombudsman performs the following duties:

- Provides information as appropriate on the rights and responsibilities of individuals with developmental disabilities receiving services, and on the procedures for providing these services;
- Investigates, upon his or her own initiative, or upon receipt of a complaint, an administrative act alleged to be contrary to law, rule, or policy, imposed without an adequate statement of reason, or based on irrelevant, immaterial, or erroneous grounds; however, the ombudsman may decline to investigate any complaint as provided by rules adopted under this chapter;
- Monitors the procedures as established, implemented, and practiced by the DSHS to carry out its responsibilities in delivering services to persons with developmental disabilities;
- Reviews periodically the facilities and procedures of state institutions serving persons with developmental disabilities, and state licensed facilities or residences;
- Recommends changes in the procedures for addressing the needs of persons with developmental disabilities;
- Submits annually to the appropriate committees of the legislature and to the governor by November 1st a report analyzing the work of the office including recommendations;
- Grants the appropriate committees of the legislature access to all relevant records in the possession of the Ombudsman unless prohibited by law; and
- Adopts rules necessary to implement this chapter.

If the Ombudsman has reasonable cause to believe that any public official, employee, or other person acted in a manner warranting criminal or disciplinary proceedings, the Ombudsman must report the information to the appropriate authorities.

Access to Information

When the Ombudsman is carrying out his or her official duties, the DSHS must permit the following:

- The Ombudsman or the Ombudsman's designee to communicate privately with any person with developmental disabilities who is receiving services through the DSHS;
- The Ombudsman or the Ombudsman's designee physical access to state institutions serving persons with developmental disabilities, and state-licensed facilities or residences;

- Grant the Ombudsman or the Ombudsman's designee the right to access, inspect, and copy all relevant information, records, or documents in the possession or control of the DSHS that the Ombudsman considers necessary in an investigation.

Confidentiality

The Ombudsman is required to treat all matters under investigation, including the identities of service recipients, complainants, and individuals from whom information is acquired, as privileged and confidential, except as necessary to enable the Ombudsman to perform the duties of the office and to support any recommendations resulting from an investigation. If the Ombudsman receives information that by law is confidential or privileged, the Ombudsman must maintain the confidentiality of the information and not further disclose or disseminate the information, except as provided by law. However, the Ombudsman may not keep information confidential if it is directly related to an alleged crime, there is risk of imminent serious harm to any person, or if it is related to the general operation of the Ombudsman's office.

Investigative records of the Office of the Ombudsman are confidential and are exempt from public disclosure. Identifying information about complainants or witnesses are not be subject to any method of legal compulsion and this information cannot be revealed to the Governor except when the complainant or witness waives confidentiality or there is an investigation by the Governor or Legislature for neglect of duty or misconduct by the Ombudsman or Ombudsman's office and the identifying information is necessary to the investigation of the Ombudsman's acts.

Liability

An employee of the Office of the Ombudsman for Persons with Developmental Disabilities is not liable for the good faith performance of his or her official responsibilities. No discriminatory, disciplinary, or retaliatory action may be taken against an employee, family member, or recipient of developmental disability services for any communication or information given to aid the office of the Ombudsman, unless the communication or information is given maliciously or without good faith.

Appropriation: None.

Fiscal Note: Requested on 1/23/06.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.